IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. NO. 512 OF 1990 &
XOBJ 41-CII OF 1990 &
DATE OF DECISION: 02.08.2006

ORIENTAL FIRE AND GENERAL INSURANCE COMPANY NOW KNOWN AS ORIENTAL INSURANCE COMPANY LIMITED
...APPELLANT

VERSUS

SMT AMRIT KAUR ALIAS PARAMJIT KAUR AND OTHERS
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: MR. N.K. KHOSLA, ADVOCATE
FOR THE APPELLANT

MR. H.S. GILL, SR. ADVOCATE WITH
MR. VIVEK GOEL, ADVOCATE
FOR THE RESPONDENTS.

JUDGMENT

This appeal is filed by the Insurance Company solely on the ground that in terms of provision of Section 95 (2) of the Motor Vehicles Act, 1939, the liability of the insurance company is limited to the extent of Rs. 1,50,000/- and the award of the Tribunal, whereby the insurance company has been made liable to satisfy the entire award, be set aside.

The claimants have also filed cross-objection bearing No. XOBJ 41-CII of 1990 for enhancement of compensation. According to them, the amount awarded by the Tribunal is not in consonance with the evidence on record.

I have heard counsel for the parties and perused the record.

Brief facts, as noticed in the award, are that deceased-Amarjit Singh, constable in Punjab Police, died in an accident occurred on 18.11.1987 at about 7 P.M., while returning from the Office of Deputy Inspector General of Police, Jalandhar Range, Jalandhar, in the Punjab Armed Police Lines, after delivering letters. Deceased was knocked down by tractor trolly bearing No. PJJ-4873 driven by Satpal Singh, and Jaspal

Singh and Manmohan Singh were owners of the tractor trolly. The same was insured with the appellant-insurance company.

As far as the question of negligence is concerned, the Tribunal recorded a categoric finding that the driver-Satpal of the tractor trolly came from opposite side on a very high speed. The same was being driven on the wrong side of the road without head lights on. Consequently, it hit the motor cycle inspite of the deceased having taken the same to its extreme left, as a result of which the deceased fell right in front of the tractor. The same version was given by Head Constable Bhupinder Singh, who was the pillion rider of the motor cycle driven by the deceased, who lodged FIR with the police.

In cross-examination, the testimony of the sole eye witness could not be shaken being a pillion rider on the motor cycle itself when it met with an accident. No cogent evidence has been produced by the owners or the driver of the vehicle to dislodge the claim of the claimants.

Accordingly, only possible conclusion was that the accident took place because of rash and negligent driving of the driver of tractor trolly. So, I do not find any error having been committed by the Tribunal in recording these findings. Accordingly, I concur with the view taken by the Tribunal and uphold the same.

As far as the liability of the insurance company is concerned, counsel for the respondents submitted that in terms of settled position of law by various judgments of Hon'ble the Supreme Court as well as this Court, the entire amount of compensation should be directed to be paid by the Insurance Company to the claimants/respondents, who may recover the excess amount from the insured. To support his arguments he has relied upon the judgments in **Oriental Insurance Co. Ltd. vs. Cheruvakkara Nafeessu and Ors** JT 2001 (1) Supreme Court 341, **National Insurance Co. Ltd. vs. Challa Bharathamma and others** 2004 (3) ACJ 2094 and **Gurmeet Kaur and another vs. Mohinder Singh and others** 2006 (1) PLR 684. In Cheruvakkara Nafeessu's case (supra) it is held as under:

> "11. The appeal is accordingly allowed holding that the appellant-company is liable to pay the entire award

> amount to the claimants. Upon making such payment the appellant can recover the excess amount from the insured by executing this Award against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988. No costs"

I have perused the judgments which clearly support the contention raised by the counsel for the respondents. In this view of the matter, it is directed that the entire amount of enhanced compensation shall be paid by the Insurance Company to the claimants and as the liability of the insurance company is limited to Rs. 1,50,000/-, the exess amount paid by it would be recoverable from the insured in accordance with law.

The cross-objection has been filed by the claimants for enhancement of compensation awarded by the Tribunal. The claimants are mother, widow wife and two minor children of the deceased. The Tribunal on consideration of the evidence on record had awarded Rs. 2,40,000/- as compensation.

The uncontroverted evidence on record is that at the time of death, the deceased was drawing a salary of Rs. 1339.30 paise per month employed as Constable in Punjab Police. The salary of the deceased was increased to Rs. 1800/- per month w.e.f. 1.1.986. The contention of the counsel for the claimants is that the determination of compensation by the Tribunal by assessing the dependency at Rs. 1250/- per month, is on lower side for the reasons that keeping in view the age of the deceased i.e. 28 years, his employement as constable in the Punjab Police, his future prospects in career. To support his arguments he relied on *Kerala State Road Transport Corporation vs. Susamma Thomas and others* 1994(2) P.L.R. 1 (SC) and *Smt. Sarla Dixit vs. Balwant Yadav* 1996 (2) P.L.R. 656 (SC).

In Kerala State Road Transport Corporation's case (Supra) Hon'ble the Supreme Court while considering the issue on future prospects in life and estimation of income in that light observed as under:

> "13. .....The deceased person in this case had a more

> or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs. 1,032/- per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs. 2,000/- as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was Spartan or Bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalize with the appropriate multiplier. In the present case we can take about Rs. 1,400/- per month or Rs. 17,000/- per year as the loss of dependency and if capitalized on a multiplier of 12, which is appropriate to the age of the deceased, the compensation would work out to (Rs. 17,000/- x 12 = Rs. 2,04,000/-) to which is added the usual award for loss of consortium and loss of the estate each in the conventional sum of Rs. 15,000/-"

Considering the principles of determination of compensation as laid down in the above referred judgments and keeping in view future prospects in life, in my opinion, it would be just and reasonable to assess the income of the deceased at Rs. 2,700/- per month and applying a cut of 1/3rd

on the present income, the dependency is taken at Rs. 1,800/- per month i.e. Rs. 21,600/-. Applying a multiplier of 16, the amount of compensation is determined at Rs. 3,45,600/-. To this a sum of Rs. 2,400/- is added as funeral expenses and another Rs. 15,000/- on account of loss of consortium, the total being Rs. 3,63,000/-. The additional amount of compensation shall be payable to the claimants alongwith interest @ 7.5 % per annum from the date of application till the payment.

Out of the additional amount of compensation alongwith interest, 10 % shall be paid to the mother of the deceased, 50% shall be paid to the widow of deceased and 20 % each shall be paid to the two children of the deceased.

The award is modified to the extent indicated above, and the appeal as well as the cross-objections are disposed of accordingly.

August 02, 2006 **(RAJESH BINDAL)**
gsv **JUDGE**